

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DORSE INTERNATIONAL, INC.,

Plaintiff,

COMPLAINT

JURY TRIAL DEMANDED

-- against --

D.R.A GAD, INC.,

Case No. 07 Civ. 7642 (SHS) (FM)

ECF Case

Defendant.

-----X

Plaintiff, DORSE INTERNATIONAL, INC. ("Dorse"), by its undersigned counsel, brings this Complaint against defendant D.R.A. GAD, INC. ("D.R.A.") and respectfully alleges as follows:

NATURE OF THE ACTION

1. This is an action for, *inter alia*, breach of contract, unjust enrichment, conversion, and restitution for bad checks, all based on unlawful and improper conduct committed by defendant as against plaintiff.

JURISDICTION AND VENUE

2. The Court's jurisdiction is invoked in accordance with 28 U.S.C. §1332(a) in that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and there exists complete diversity among the parties as Dorse is a Georgia corporation and D.R.A. is a New York corporation.

3. Venue is proper pursuant to 28 U.S.C. §1391(a) because the substantial part of the relevant events concerning this case occurred within, and D.R.A. maintains its principal place of business in, the Southern District of New York.

THE PARTIES

4. Dorse is a corporation existing by virtue of the laws of the State of Georgia, with offices located at 2385 Scotney Castle Lane, Powder Springs, Georgia.

5. D.R.A. is a corporation existing by virtue of the laws of the State of New York, with its principal offices located at 15 West 47th Street, Suite 802, New York, New York, and its registered agent for service located at 97-07 67th Avenue, Rego Park, New York, where D.R.A. may be served with process.

THE FACTS

6. Dorse is in the business of exporting precious gemstones from Africa and selling them to distributors and retailers within the United States and throughout the world.

7. Upon information and belief, D.R.A. is in the business of purchasing precious gemstones from importers and selling them to jewelers and retailers within the Southern District of New York, throughout the United States and around the world.

8. Upon information and belief, D.R.A. maintains its principal place of business in the area located on West 47th St., New York, New York which is commonly known as the "Diamond District."

9. At all times herein, there was a general custom in and throughout the Diamond District well understood by jewelry dealers including Dorse and D.R.A. that business was conducted by oral agreement and on good faith, based on a track record of previous performance of obligations.

10. In or about February 2006, the principals of both Dorse and D.R.A. entered into an oral purchase contract whereby D.R.A. agreed to purchase and did

purchase a quantity of goods, namely Tanzanite, a precious gemstone exported from the country of Tanzania, from Dorse which had possession of and legal title to the Tanzanite gemstones (the "Contract").

11. Upon information and belief, at the time of the Contract, the prevailing wholesale purchase price for Tanzanite was approximately \$370 per carat.

12. Based upon the prevailing wholesale price of \$370, the quantity of Tanzanite purchased by D.R.A. from Dorse was worth \$155,298.

13. As part of the terms and conditions of the Contract, Dorse offered D.R.A. a substantial discount off of the standard wholesale price in exchange for payment pursuant to the Contract.

14. The total discounted price offered to D.R.A. by Dorse was \$134,000 which, pursuant to the Contract, was contingent upon D.R.A. presenting eight checks each in the amount of \$16,750 payable to Dorse and post-dated for deposit of one check during each of the successive eight months.

15. At all times herein, it was the general custom in the Diamond District that if payment was not made pursuant to the Contract, that the discounted price offered as per the Contract would be rescinded and that the buyer would be obligated to pay the prevailing wholesale purchase price to the seller.

16. Pursuant to the Contract, D.R.A. presented Dorse with eight checks, to be drawn on its account at Valley National Bank located in New York, New York.

17. Pursuant to the Contract, Dorse delivered the Tanzanite stones and they were accepted by D.R.A. without reservation or objection.

18. The first four checks written by D.R.A. were presented for payment and each were honored and accepted by Dorse's bank for deposit.

19. However, when the last four checks were presented for payment, none were honored by Dorse's bank and all were returned for insufficient funds in D.R.A.'s account.

20. The four dishonored checks were as follows:

- a. Check No. 9245, dated November 30, 2006, in the amount of \$16,750;
- b. Check No. 9246, dated December 12, 2006, in the amount of \$16,750;
- c. Check No. 9248, dated January 11, 2007, in the amount of \$16,750;
- d. Check No. 9249, dated January 25, 2007, in the amount of \$16,750.

True copies of the four dishonored checks and their corresponding notices of dishonor from Wachovia Bank are attached hereto as Exhibit "A."

21. Dorse, through its counsel, made written demand to D.R.A. for payment on the four dishonored checks pursuant to O.C.G.A. § 13-6-15(c). A copy of the written notice is attached hereto as Exhibit "B."

22. After receipt of the written notice, D.R.A. remitted partial payment to Dorse in the amount of \$10,000 via wire transfer.

23. Upon information and belief, D.R.A. sold all of the Tanzanite stones received from Dorse at retail price, including the gem stones for which it did not pay.

**FIRST CAUSE OF ACTION
(Breach of Contract)**

24. Plaintiff repeats and realleges paragraphs "1" through "23" as if fully set forth herein.

25. Pursuant to U.C.C. § 2-201 (3) (c), the Contract is valid and enforceable despite not satisfying the requirements of the Statute of Frauds because partial payment has been made and the goods were accepted by the buyer, D.R.A.

26. D.R.A. breached the Contract by failing to make payment for the Tanzanite stones that it had already received and accepted in accordance with the Contract.

27. By virtue of D.R.A.'s breach, it forfeited the conditionally discounted price offered in the Contract.

28. Thus, D.R.A. owes Dorse \$77,298, which is the remainder of the prevailing wholesale purchase price of the Tanzanite stones, plus interest thereon from the date of the breach.

SECOND CAUSE OF ACTION
(Damages for the Writing of Bad Checks; O.C.G.A. § 13-6-15, et seq.)

29. Dorse repeats and realleges paragraphs "1" through "23" as if fully set forth herein.

30. D.R.A. has violated Section 13-6-15(a) of the Official Code of Georgia (O.C.G.A.), by making and delivering four bad checks that were presented for deposit and dishonored in the State of Georgia.

31. D.R.A. is liable to Dorse for the face amount of the checks equaling the sum of \$67,000, plus statutory damages in the amount of \$500 and a statutory premium charge of 5% of the face value of the four checks in the amount of \$3,350, as well as all bank charges to be determined at trial.

32. D.R.A. has reduced its liability under this cause of action by remitting partial payment in the amount of \$10,000.

33. Therefore, Dorse is entitled to a judgment under O.C.G.A. § 13-6-15, against D.R.A., in the amount of \$60,850, plus bank charges.

THIRD CAUSE OF ACTION (Unjust Enrichment)

34. Dorse repeats and realleges paragraphs “1” through “23” as if fully set forth herein.

35. D.R.A. was in possession of \$77,298 worth of Tanzanite stones that it received from Dorse pursuant to the Contract, but for which it did not pay.

36. Upon information and belief, D.R.A. is no longer in possession of the Tanzanite stones and has sold them at a profit—for substantially more than the prevailing wholesale price.

37. Therefore, Dorse is entitled to a judgment against D.R.A. for its damages caused by D.R.A.’s unjust enrichment in an amount to be determined at trial, but for no less than \$77,298, plus interest thereon.

FOURTH CAUSE OF ACTION (Conversion)

38. Dorse repeats and realleges paragraphs “1” through “23” as if fully set forth herein.

39. D.R.A. exercised exclusive and unauthorized dominion over the \$77,298 worth of Tanzanite gemstones that it received from Dorse without making payment.

40. As a result of the foregoing, D.R.A. converted \$77,298 worth of Tanzanite gemstones from Dorse.

41. D.R.A.'s conversion of those Tanzanite gemstones was accomplished by malice and/or reckless or willful disregard of Dorse's rights.

42. As a result of the conversion, Dorse has been damaged in an amount to be determined at trial, but for no less than \$77,298, plus interest and punitive damages thereon.

WHEREFORE, Plaintiff Dorse International, Inc. prays for relief as follows:

- (a) On the First Cause of Action, that a judgment be entered in favor of Dorse against D.R.A. in an amount to be determined at trial, but in no event less than \$77,298, plus interest thereon;
- (b) On the Second Cause of Action, that a judgment be entered in favor of Dorse and against D.R.A. in an amount not less than \$60,850, plus bank charges, and interest thereon;
- (c) On the Third Cause of Action, that a judgment be entered in favor of Dorse and against D.R.A. in an amount to be determined at trial, but in an amount not less than \$77,298, plus interest thereon;
- (d) On the Fourth Cause of Action, that a judgment be entered in favor of Dorse and against D.R.A. in an amount to be determined at trial, but in an amount not less than \$77,298, plus interest thereon and punitive damages in an amount to be determined at trial, but in an amount not less than \$500,000;

- (e) That Dorse be awarded attorney's fees, costs and disbursements; and
- (f) For such further relief as this Court deems just and proper.

Dated: New York, New York
August 27, 2007

WINOGRAD & WINOGRAD P.C.

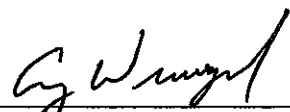
By: 
Corey Winograd (CW-8280)
450 Seventh Avenue, Suite 1308
New York, New York 10123
(212) 268-6900
Attorneys for Plaintiff

EXHIBIT “A”

Date: Dec 11, 2006 Advice D-529836

Acct: 005/2080000644358

WACHOVIA

A fee associated with this service will be reflected in your current account analysis statement. The items listed are enclosed. You may obtain payment from the maker.


SEQ#	ITEM	AMOUNT
31509		16,750.00

**DORSE INTERNATIONAL
2385 SCOTNEY CASTLE LN
POWDER SPRINGS GA 30127**

1 Item charged totaling \$16,750.00

Advice Total \$16,750.00

04023331980 0020800006443580 000005298360

D.R.A. GAD, INC. 15 W. 47TH ST., STE. 802 NEW YORK, NY 10036		VALLEY NATL BK MERCHANTS BK NEW YORK CITY, NY 10039 1-679/260		9245  11/30/2006
Pay to the Order of	Dorse International, Inc.	<div style="border: 2px solid black; padding: 5px; display: inline-block;"> NSF RETURNED BY VALLEY NATIONAL BANK </div>		\$**16,750.00
Sixteen Thousand Seven Hundred Fifty and 00/100*****		12/06/2006 000015		
Dorse International, Inc.		Dollars		
memo	Purchase. Replace #9912			
⑈009245⑈ ⑆026006790⑆		03 073168⑈		⑈0001675000⑈

5140648
162006 VALLEY NATL BANK INC
000040 FRB-PHILA
#0410 CR60648 PK#2/05/2006 0153
1253833
#0410 CR60648 PK#2/05/2006 31599
#0010 FRB-PHILA
#0410 CR60648 PK#12
#0410 CR60648 PK#05
701 12624 231
701 12624 231
701 12624 231

#0631075134
 NACHOVIA IN SV 357 43321
 ORLANDO FL 32842-006 16PK

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE

**PAY TO THE ORDER OF
WACHOVIA BANK NA
FOR DEPOSIT ONLY
DORSE INTERNATIONAL
20800064435B**

~~X~~ ENCLOSURE HERE

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE

4077 76503

0116392399
12142006
31000040 FRB-PHILA
NT=0218 VTD-0218 PK=0400 JNC
0444080770 12/14/2006 010
12142006 31 12 12-18-2006 41063
12142006 33119348
031000040 FRB-PHILA
NT=0218 VTD-0218 PK=12
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#063107513
 MAGNITIA NA SWANZ 5-5
 (ALAND) FL 121246 16
 002 007 111 111 111 111

VALLEY NATL BK MERCHANT SB
NEW YORK CITY NY 10038
1-579-260

9246



\$16,750.00**

0021291383 NSF
RETURNED BY
VALLEY NATIONAL
BANK

Purchase

Depose #9912

"009246" :026006790: 03 05 1968

10004425004

Acct: 005/2080000644358

↓ Do not endorse or write below this line. ↓



Acct: 005/2080000644358

WACHOVIA

A fee associated with this service will be reflected in your current account analysis statement. The items listed are enclosed. You may obtain payment from the maker.

SEQ# ITEM AMOUNT
 36287 16,750.00

DORSE INTERNATIONAL
 2385 SCOTNEY CASTLE LN
 POWDER SPRINGS GA 30127

1 Item charged totaling \$16,750.00

Advice Total \$16,750.00

⑆402333198⑆ 002080000644358⑈ ⑈0000496585⑈

D.R.A. GAD, INC. 15 W. 47TH ST., STE. 802 NEW YORK, NY 10036		VALLEY NATL BK MERCHANTS BK NEW YORK CITY, NY 10036 1-879/200		9249
Pay to the Order of Dorse International, Inc.		1/25/2007		\$**16,750.00
Sixteen Thousand Seven Hundred Fifty and 00/100		PAID BY		INC 0640902880 01/31/2007 0 0 Dollars
Dorse International, Inc.		VALLEY NATIONAL BANK		
memo Purchase - Duplex #9011				
⑆009249⑆ ⑆026006790⑆		03 073168⑆		⑆0001675000⑆

ENDORSE HERE

PAY TO THE ORDER OF
 WACHOVIA BANK NA
 FOR DEPOSIT ONLY
 DORSE INTERNATIONAL
 2080000644358

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
 RESERVED FOR FINANCIAL INSTITUTION USE

1306157
 012007
 34000040 FFB PHILA
 NY 0108 TRC 0258 PK 14
 0640902880 01/31/2007 013
 14 0023627
 1202200237609615
 1310000605490 PHILA
 NY 600639031013 PK 12
 ENT 5855 TRC 5061 PK 05

EXHIBIT “B”

RICHARD S. ALEMBIK, PC

ATTORNEYS AT LAW

315 West Ponce de Leon Avenue, Suite 250
Decatur, Georgia 30030-5100 (USA)

www.alembik.com

OF COUNSEL

WILLIAM S. DOMINY
E. MICHELLE DRAKE

RICHARD S. ALEMBIK

404-373-0205
404-795-8999 (FAX)
rick@alembik.com

March 8, 2007

VIA FIRST CLASS AND

CERTIFIED MAIL NO.: 7006 0810 0004 2208 0880

Mr. Doron Gad
1628 Diplomat Dr.
Miami, FL 33179-6417

VIA FIRST CLASS AND

CERTIFIED MAIL NO.: 7006 0810 0004 2208 0897

Mr. Doron Gad
150 Green way Ter.
Apt. 51-E
Forest Hills, NY 11375-5298

RE: Notice of Bad Check Pursuant to
Official Code of Georgia § 13-6-15(c)

Our Client(s): Dorse International, Inc.

Our File No.: 2174001-001-010

Dear Mr. Gad:

You are hereby notified that the following instruments:

Number	Date	Amount	Name of Bank
9249	1/25/07	\$16,750	Valley Natl. Bk. Merchants Bk.
9248	1/11/07	\$16,750	Valley Natl. Bk. Merchants Bk.
9246	12/12/06	\$16,750	Valley Natl. Bk. Merchants Bk.
9245	11/30/06	\$16,750	Valley Natl. Bk. Merchants Bk.

Mr. Doron Gad
March 8, 2007
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drawn upon Valley National Bank Merchants Bank and payable to "Dorse International, Inc." have been dishonored.

Pursuant to Georgia law, you have ten days from receipt of this notice to tender payment of the full amount of the check or instrument plus a service charge of \$25 or 5 percent of the face amount of the check or instrument, whichever is greater, plus the amount of any fees charged to the holder of the instrument by a bank or financial institution as a result of the instrument not being honored, the total amount due being \$70,350.

Unless this amount is paid in full within the ten-day period, the holder of the check or instrument may file a civil suit against you for two times the amount of the check or instrument, but in no case more than \$500, in addition to the payment of the check or instrument plus any court costs incurred by the payee in taking the action.

Please transmit payments to this office and make any instrument payable to "Dorse International, Inc."

Sincerely,

RICHARD S. ALEMBIK, PC

By:



Richard S. Alembik

RA/ach

cc: Dorse International, Inc. (via e-mail only)

RICHARD S. ALEMBIK, PC**ATTORNEYS AT LAW**315 West Ponce de Leon Avenue, Suite 250
Decatur, Georgia 30030-5100 (USA)
www.alembik.com**OF COUNSEL**WILLIAM S. DOMINY
E. MICHELLE DRAKE

RICHARD S. ALEMBIK

404-378-0205
404-795-8989 (FAX)
rick@alembik.com

March 8, 2007

VIA FIRST CLASS AND

CERTIFIED MAIL NO.: 7006 0810 0004 2208 0880

Mr. Doron Gad
1628 Diplomat Dr.
Miami, FL 33179-6417

VIA FIRST CLASS AND

CERTIFIED MAIL NO.: 7006 0810 0004 2208 0897

Mr. Doron Gad
150 Green way Ter.
Apt. 51-B
Forest Hills, NY 11375-5298RE: Notice of Bad Check Pursuant to
Official Code of Georgia § 13-6-15(c)Our Client(s): Dorac International, Inc.
Our File No.: 2174001-001-010**RICHARD S. ALEMBIK, PC****ATTORNEYS AT LAW**315 West Ponce de Leon Avenue, Suite 250
Decatur, Georgia 30030-5100 (USA)
www.alembik.com**OF COUNSEL**WILLIAM S. DOMINY
E. MICHELLE DRAKE

RICHARD S. ALEMBIK

404-378-0205
404-795-8989 (FAX)
rick@alembik.com

March 8, 2007

VIA FIRST CLASS AND

CERTIFIED MAIL NO.: 7006 0810 0004 2208 0880

Mr. Doron Gad
1628 Diplomat Dr.
Miami, FL 33179-6417

VIA FIRST CLASS AND

CERTIFIED MAIL NO.: 7006 0810 0004 2208 0880

Mr. Doron Gad
150 Green way Ter.
Apt. 51-B
Forest Hills, NY 11375-5298RE: Notice of Bad
Official Code

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, on the front if space permits.</p>		<p>A. Signature X <i>[Signature]</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to: Mr. Doron Gad 1628 Diplomat Dr. Miami, FL 33179-6417</p>		<p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery 3-12-07</p>	
<p>2. Article Number (Transfer from card) 7006 0810 0004 2208 0880</p>		<p>D. Is delivery address different from item B? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>PS Form 3811, February 2004</p>		<p>RECEIVED MAR 16 2007 R.S. Alembik, P.C.</p>	
<p>3. Service Type: <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>Domestic Return Receipt 102595-02-M-1540</p>			

O.C.G.A. 13-6-15

Mr. Doron Gad
March 8, 2007
Page 2

drawn upon Valley National Bank Mercha
Inc." have been dishonored.

Pursuant to Georgia law, you have
payment of the full amount of the check or
percent of the face amount of the check or
amount of any fees charged to the holder o
as a result of the instrument not being hon

Unless this amount is paid in full w
or instrument may file a civil suit against y
instrument, but in no case more than \$500
instrument plus any court costs incurred by

Please transmit payments to this off
International, Inc."

Sincere

RICHARD

By:

Richard

RA/ach

cc: Dorse International, Inc. (via e-mail only)

